



# COMMONWEALTH of VIRGINIA

Sandra Whitley Ryals  
Director

## Department of Health Professions

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### Virginia Board of Dentistry

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September 13, 2007

### **CERTIFIED MAIL**

7160 3901 9849 9085 0207

Kathryn A. Biery, D.D.S.  
4100 Quarles Court  
Harrisonburg, VA 22801

Case Nos. 102009, 103192, and 104672

Dear Dr. Biery:

Enclosed is a Copy Teste of the final Order that was entered by the Virginia Board of Dentistry on September 13, 2007.

This Order will be forwarded to Ann Tiller, Compliance Manager for the Department of Health Professions. Ms. Tiller will assign you a Case Manager to monitor your compliance with the terms of the Order on behalf of the Board. Please direct all questions, documents, and correspondence related to your compliance with your Order to your assigned Case Manager, at (804) 367-4632, or in care of the Compliance Unit, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233-1463. For more information on the compliance process, see:

[http://www.dhp.virginia.gov/Enforcement/compliance\\_faqs.htm](http://www.dhp.virginia.gov/Enforcement/compliance_faqs.htm) on the Department's website.

Sincerely,

Sandra K. Reen  
Executive Director  
Virginia Board of Dentistry

/cel

## Enclosure

cc: Sandra Whitley Ryals, Director, Department of Health Professions  
Howard M. Casway, Senior Assistant Attorney General  
Lorraine McGehee, Deputy Director, Administrative Proceedings Division  
William C. Garrett, Assistant Attorney General  
Leigh Compton Kiczales, Adjudication Specialist, APD  
Ron Houser, Senior Investigator (#102009, 103192, 104672)  
Gerald C. Canaan, II, Esquire  
C. Richard Cranwell, Esquire

**VIRGINIA:**

**BEFORE THE BOARD OF DENTISTRY**

**IN RE:       KATHRYN A. BIERY, D.D.S.**  
**License No. 0401-006705**

**ORDER**

Pursuant to §2.2-4020, §2.2-4021, §54.1-110 and §54.1-2400(11) of the Code of Virginia (1950), as amended, a formal administrative hearing of the Virginia Board of Dentistry ("Board"), composed of a panel of the members of the Board, was held on September 6, 2007, in Henrico County, Virginia. Dr. Biery was present and was represented by Gerald C. Canaan, II, Esquire. The case was prosecuted by William C. Garrett, Assistant Attorney General. Howard M. Casway, Senior Assistant Attorney General, was present as legal counsel to the Board. The proceedings were recorded by a certified court reporter. The purpose of the formal hearing was to receive and act upon evidence concerning the allegations set forth in the Board's Notice of Hearing and Statement of Particulars, dated August 8, 2007.

**FINDINGS OF FACT**

After consideration of the evidence and testimony presented, the Board makes the following findings of fact by clear and convincing evidence:

1. Kathryn A. Biery, D.D.S., was issued license number 0401-006705 by the Board on March 5, 1989, to practice dentistry in the Commonwealth of Virginia. Said license is currently active and will expire on March 31, 2008, unless renewed or otherwise restricted.
2. On or about January 28, 2005, during her treatment of Patient A, a three and one-half (3½) year old female, Dr. Biery failed to perform and record a complete pre-operative assessment, systems review, and physical findings to include vitals signs, pre-operative diagnosis, ASA status, existence of an upper respiratory tract infection, and recordation of a notation that lungs were clear on occultation prior to administering Fentanyl, Versed, and Ketamine. Moreover, expert testimony

established that her pre-operative administration of Vistaril exceeded written FDA dosage guidelines (2 mgs per kgs or 30 mgs) for a patient of this age and weight.

3. On or about January 28, 2005, Dr. Biery unlawfully permitted an unlicensed individual, Dental Assistant D, to administer nitrous oxide to Patient A. Dental Assistant D testified that she placed the mask on Patient A, and initiated the nitrous oxide in accordance with the routine practice in place at Dr. Biery's dental office.

4. On or about April 15, 2005, during the course of her treatment of Patient B, Dr. Biery failed to adequately document a pre-operative diagnosis and the procedure to be performed. Further, in Patient B's anesthesia record, Dr. Biery failed to document the person administering the anesthesia, the patient's vital signs, and noted a left buccal injection in the anesthesia record, although the "master" patient record indicated a buccal injection on the right.

5. On or about April 15, 2005, Dr. Biery failed to document the existence of a treatment team of three (3) people during the administration of general anesthesia to Patient B, as required.

6. Dr. Biery routinely permitted and often telephonically instructed unlicensed staff, specifically dental assistants and EMTs, to administer anxiolysis or inhalation analgesia, deep sedation/general anesthesia and conscious sedation to patients. Dr. Biery permitted preparation and administration of oral pre-medications (the "110" or "drink" consisting of 100cc Vistaril and 10cc Versed), starting an IV line, pushing medication consisting of 1cc each of Versed, Ketamine and Fentanyl (the "cocktail"), initiating and adjusting the volume of nitrous oxide, controlling the airway of an unconscious patient and the monitoring of sedated (unconscious) patients prior to dentist's initiation of treatment. Furthermore, parents were routinely left alone with their unmonitored children following administration of the pre-operative medications.

7. Dr. Biery testified that as a result of the initiation of the Board disciplinary process, she

changed her office procedure in an attempt to comply with the applicable laws and regulations regarding the administration of anesthesia by unlicensed staff, although believing her prior interpretation of the laws and regulations was proper. She further testified that she has improved her record-keeping.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Board concludes that:

1. Finding of Fact #2 constitutes a violation of § 54.1-2706(5) and (11) of the Code, and 18 VAC 60-20-15(3) of the Regulations of the Board of Dentistry.
2. Finding of Fact #3 constitutes a violation of § 54.1-2706(5), (9) and (11) of the Code, and 18 VAC 60-20-170(5) and 18 VAC 60-20-190(8) of the Regulations of the Board of Dentistry.
3. Finding of Fact #4 constitutes a violation of § 54.1-2706(9) of the Code, and 18 VAC 60-20-15(3) and (7), and 18 VAC 60-20-110.E(3) of the Regulations of the Board of Dentistry.
4. Finding of Fact #5 constitutes a violation of § 54.1-2706(5), (9) and (11) of the Code, and 18 VAC 60-20-110.E(1) [*formerly 18 VAC 60-20-130(C)*] of the Regulations of the Board of Dentistry.
5. Finding of Fact of Fact # 6 constitutes a violation of § 54.1-2706(5), (9) and (11) of the Code, and 18 VAC 60-20-170(5), 18 VAC 60-20-190(8) of the Regulations of the Board of Dentistry.

### **ORDER**

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that Dr. Biery shall be assessed a MONETARY PENALTY of twenty-four thousand dollars (\$24,000) to be paid to the Board within thirty (30) days of the entry of this Order.

It is further ORDERED that Dr. Biery's license to practice dentistry in the Commonwealth of Virginia be placed on PROBATION, for not less than two (2) years, subject to the following terms and conditions:

1. Within thirty (30) days of the entry of this Order, Dr. Biery shall provide written proof to the Board of successful completion of the online Virginia Dental Law Examination.

2. Within twelve (12) months from the entry of this Order, Dr. Biery shall enroll in and successfully complete continuing education contact hours in each of the following subjects: seven (7) hours in record-keeping; four (4) hours in risk management; and four (4) hours in ethics. Prior to registration, Dr. Biery shall submit to the Board syllabi or course outlines and receive approval from the Board for said courses. Such requests for approval shall be submitted to the Board at least fifteen (15) days before the beginning of said courses. These continuing education hours shall be completed through face-to-face, interactive sessions (i.e., no home study, journal or Internet courses). Further, Dr. Biery shall submit documentation to the Board of satisfactory completion of said courses. These courses shall be in addition to the fifteen (15) continuing education hours required for renewal of her license.

3. Dr. Biery shall be subject to not less than three (3) unannounced inspections of her practice by an inspector/investigator of the Department of Health Professions during the probationary period. Such inspections shall be conducted during normal business hours and shall include a review of Dr. Biery's office and equipment, and may include interviews with staff. Dr. Biery shall make her patient dental and/or billing records available to the inspector/investigator. During the inspection, the inspector/investigator shall obtain and copy a random sample of ten (10) of Dr. Biery's anesthesia records for review by a Special Conference Committee. Dr. Biery is solely responsible for the payment of a three-hundred and fifty dollar (\$350.00) inspection fee to be paid to the Board within thirty (30) days of each such inspection. Failure to pay the full fee shall constitute grounds for an administrative proceeding. In the event that any such inspection reveals a possible violation of the laws or regulations pertaining to the practice of dentistry in Virginia, or Chapter 34 of Title 54.1, (§§ 54.1-3400 et seq. Virginia Drug Control

Act) of the Code of Virginia (1950), as amended, the Board specifically reserves the right to conduct further proceedings in this matter.


4. At the end of the two (2) year probationary period, Dr. Biery may petition the Board to appear before a Special Conference Committee to consider release from probation.

Any violation of the foregoing terms and conditions of this Order or any statute or regulation governing the practice of dentistry in the Commonwealth of Virginia may constitute grounds for the suspension or revocation of the license of Kathryn A. Biery, D.D.S., and an administrative proceeding may be convened to determine whether Dr. Biery's license to practice dentistry in the Commonwealth shall be suspended or revoked.

Pursuant to Sections 2.2-4023 and 54.1-2400.2 of the Code of Virginia (1950), as amended, the signed original of the Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public release, inspection and copying upon request.

As provided by Rule 2A:2 of the Supreme Court of Virginia, Kathryn A. Biery, D.D.S., has thirty (30) days from the date of service (the date she actually received this decision or the date it was mailed to her, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Sandra K. Reen, Executive Director, Virginia Board of Dentistry. In the event that this decision is served by mail, three (3) days are added to that period.

FOR THE BOARD:

  
Sandra K. Reen  
Executive Director  
Virginia Board of Dentistry

ENTERED: September 13, 2007

Certificate of Service

I hereby certify that a true copy of the foregoing Order was mailed this 13<sup>th</sup> day of September 2007, to Kathryn A. Biery, D.D.S., Mountain View Dental Team, 4100 Quarles Court, Harrisonburg, Virginia 22801, and to Gerald C. Canaan, II, Esquire, Hancock, Daniel, Johnson & Nagle, P.C., Post Office Box 72050, Richmond, Virginia, 23233-2050.

Sandra K. Reen

Sandra K. Reen  
Executive Director  
Board of Dentistry

September 13, 2007

DATE